

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIMITAR DERMENDZIEV,

Petitioners,

v.

JEFFREY A. UTTECHT, *et al.*,

Respondents.

CASE NO. C13-0236-JCC

ORDER

This matter comes before the Court on Petitioner's objections¹ (Dkt. Nos. 48, 51) to the Report and Recommendation ("R&R") of the Honorable James P. Donohue, United States Magistrate Judge (Dkt. No. 42) and Petitioner's motion to supplement/expand the record (Dkt. No. 49). Judge Donohue's R&R recommends that the Court deny Mr. Dermendziev's § 2254 petition (Dkt. No. 1); deny Mr. Dermendziev a certificate of appealability; and deny as moot the remainder of Petitioner's motions, which include *inter alia* a motion to obtain discovery within and beyond the existing state-court record, a motion to dismiss and for default judgment, a motion to reconsider regarding Mr. Dermendziev's request to supplement the record, and a

¹ Petitioner initially requested an extension of time to file objections, which the Court granted on October 18, 2013. (Dkt. No. 47.) However, he also filed a set of objections which were docketed the same day that the Court granted the extension. (Dkt. No. 48.) Petitioner's renewed objections were due November 18, 2013. (Dkt. No. 47.) On November 19, 2013, the Court received a 50-page addendum to Petitioner's objections that he mailed to the Court on November 14, 2013. (Dkt. No. 51.) Notwithstanding the length of this document, the Court has considered it in addition to Petitioner's original objections.

1 motion to reconsider Chief Judge Pechman's denial of Petitioner's recusal motion. (*See* Dkt.
2 Nos. 32, 35, 38–40.) Having thoroughly considered the R&R, the parties' briefing, and the
3 relevant record, the Court finds oral argument unnecessary and ADOPTS the Report and
4 Recommendation in full. (Dkt. No. 42.) Petitioner's motion to expand the record is DENIED.

5 **I. DISCUSSION**

6 A district court must conduct a *de novo* review of those portions of a magistrate judge's
7 report to which a party properly objects. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3); Rule
8 8(b) of the Rules Governing Section 2254 Cases. A party properly objects when he or she files
9 "specific written objections" to the magistrate judge's report as required under Federal Rule of
10 Civil Procedure 72(b)(2). In contrast, general objections, or summaries of arguments previously
11 presented, have the same effect as no objection at all, since the Court's attention is not focused
12 on any specific issues for review. *Howard v. Sec'y of Health and Human Svcs.*, 932 F.2d 505,
13 509 (6th Cir. 1991).

14 Petitioner raises four grounds for relief in his § 2254 motion: (1) prosecutorial
15 misconduct; (2) ineffective assistance of counsel regarding defense counsel colluding with the
16 prosecution; (3) the trial judge's abuse of discretion; and (4) personal immunity from criminal
17 prosecution. (Dkt. No. 42 at 5; 9 at 5–11.) Judge Donohue rejected Petitioner's claims and
18 recommends that the Court dismiss Mr. Dermendzhev's motion with prejudice (1) because
19 Petitioner procedurally defaulted these claims by failing to fairly present them as federal
20 constitutional issues to all levels of the state courts; and (2) because Mr. Dermendzhev's petition
21 fails to demonstrate that the state-court adjudication was contrary to, or an unreasonable
22 application of, established federal law, or was an unreasonable determination of the facts in light
23 of the evidence presented. (Dkt. No. 42 at 5.) Petitioner now objects to Judge Donohue's R&R
24 by raising largely the same rambling, speculative, and conclusory contentions he made below.
25 Upon review, the Court overrules Petitioner's objections, adopts the R&R, and dismisses the
26 petition with prejudice.

1 Petitioner objects primarily on the basis that it is “self-evident” from his charts of
2 evidence that “all claims in all 4 ground[s] have been overexhausted and moreover certified by
3 the [Washington] Supreme Court[.]” (Dkt. No. 48 at 9, 11–12.) The Court disagrees. Judge
4 Donohue specifically reviewed each of Petitioner’s claims and cited the portions of the state-
5 court record and opinions that demonstrate Mr. Dermendziev’s failure to fairly present the claims
6 as federal constitutional questions. (Dkt. No. 42 at 5–13.) While Petitioner presents pages of
7 vague and repetitive arguments regarding the factual basis for his claims, he does not seriously
8 grapple with the procedural default holding of the R&R. Additionally, the Court agrees with
9 Judge Donohue’s conclusion—which Petitioner has not seriously addressed—that he cannot
10 overcome his procedural default because he has failed to demonstrate either cause for the default
11 or actual prejudice or that a failure to consider his claims will result in a fundamental miscarriage
12 of justice. (Dkt. No. 42 at 12) (citing *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).) Because
13 Mr. Dermendziev has not offered any actual reason to reject Judge Donohue’s R&R, the Court
14 agrees that Petitioner failed to fairly present his claims as federal constitutional claims.

15 In addition to his objections, Petitioner filed a lengthy addendum in which he argues that
16 his prosecution and conviction were in violation of the First Amendment. This filing reiterates
17 the First Amendment/common law immunity arguments raised before Judge Donohue. First, the
18 Court is not satisfied that these claims were fairly presented to each level of the state courts.
19 (Dkt. No. 42 at 10.) Further, even if it was to be considered on the merits, the Court finds that
20 Petitioner’s argument fails. As the Court construes Mr. Dermendzeiv’s argument, he believes
21 that he is entitled to immunity because he contacted state child protection services officials about
22 his child’s drug use problem. To support his argument, he relies on the “*Noerr-Pennington*
23 doctrine” and RCW § 4.24.510 *et seq.* Mr. Dermendziev, however, does not and cannot
24 demonstrate that any state court’s determination was contrary to, or an unreasonable application
25 of, established federal law, or was an unreasonable determination of the facts in light of the
26 evidence presented. *See* 28 U.S.C. § 2254(d)(1)–(2). Indeed, the Court notes that RCW §

1 4.24.510 provides *civil* immunity, and the *Noerr-Pennington* doctrine generally provides
2 statutory immunity for one's "petitioning conduct" only. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923,
3 932 – 33 (9th Cir. 2006). Neither RCW § 4.24.510 *et seq.* nor the *Noerr-Pennington* doctrine
4 were unreasonably rejected by the state courts. Petitioner's objections are accordingly without
5 merit.

6 **II. CONCLUSION**

7 For the foregoing reasons, the Court ORDERS as follows:

- 8 (1) The Report and Recommendation (Dkt. No. 42) is ADOPTED;
9 (2) Petitioner's habeas petition is DENIED and the case is DISMISSED with
10 prejudice;
11 (3) Petitioner is DENIED issuance of a certificate of appealability;
12 (4) Petitioner's motion at Dkt. No. 38 is DENIED as meritless and the motions at
13 Dkt. Nos. 32, 35, 38, 39, 40, 49 are DENIED as moot; and
14 (5) The Clerk is respectfully directed to send copies of this Order to Petitioner and to
15 Judge Donohue.

16 DATED this 3rd day of December 2013.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE